one alleged to be an illegitimate posthumous child of a deceased workman to recover compensation for the death of the alleged father as a dependent under the English Workmen's Compensation Act, declarations by the deceased to the mother and to others, admitting that he was the father of the child and declaring his intention to marry the mother, were offered in evidence to prove paternity and dependency. *Held*, that the declarations are admissible. *Lloyd* v. *Powell Duffryn Steam Coal Co., Ltd.*, [1914] A. C. 733.

For a discussion of the results to which this decision seems to lead, see this issue of the REVIEW, p. 299.

EXECUTORS AND ADMINISTRATORS — RIGHTS, POWERS AND DUTIES — RIGHT OF RETAINER: PRESENT SCOPE OF THE DOCTRINE. — A and B, joint trustees, lost part of the trust funds by an improper investment. A died, appointing B and C his executors. C took A's place as joint trustee, and now claims the right to retain from A's estate the sum due the trust. *Held*, that he may retain. *In re Harris*, [1914] 2 Ch. 395.

A became bound to pay a certain sum to trustees, in trust for herself for life, and then for B, her daughter. She died thirty years after the obligation arose, without having paid the debt, and appointed B her executrix. B now claims the right to retain the sum due from A's estate. *Held*, that she may not retain for a debt due her as *cestui que trust*. *In re Sutherland*, 49 L. J. 490 (Chan. Div.).

In England an executor may retain from the estate the amount of a debt due to him. This right arose from the common-law rule allowing preferences to creditors of the estate and the consequent injustice if the executor were placed in a worse position than other creditors, through his inability to sue himself. *Woodward* v. *Lord Darcy*, Plowd. 184; *Crowder* v. *Stewart*, 16 Ch. D. 368. When the debt is due to another in trust for the executor, the trustee can bring suit and with the abolition of the executor's common-law right to prefer creditors, the necessity for retainer ceases. The second principal case seems correct. See, therefore, *Cockcroft* v. *Black*, 2 P. Wms. 298. *Cf. Thompson* v. *Thompson*, 9 Price, 469. It does not seem material that the claim arose after the testator's death. *In re Barrett*, 43 Ch. D. 70. In England, moreover, the executor may retain even if the claim was barred by the Statute of Limitations in the lifetime of the testator. *Stahlschmidt* v. *Lett*, 1 Sm. & G. 415. In America, the right of retainer exists in a few states, but has been generally abolished, or limited to solvent estates. See *Nelson* v. *Russell's Adm'rs*, 15 Mo. 356; *Miller* v. *Irby*, 63 Ala. 477. In states where the right still exists, the English rules are generally followed, except that, by the weight of American authority, an executor may not retain for a debt barred by the Statute of Limitations. *Hoch's Appeal*, 21 Pa. 280; *Rogers* v. *Rogers*, 3 Wend. (N. Y.) 505. If a legatee may plead the statute against a creditor when the executor does not, he should have the same right against the executor himself, and this feature of the American doctrine therefore seems preferable. See 22 HARV. L. REV. 452.

GIFTS — GIFTS *Mortis Causa* — GIFT OF DONOR'S OWN CHECK. — The testator drew a check for an amount greater than the amount of his deposit, and delivered it to the plaintiff as a gift *mortis causa*. The plaintiff now sues the executor, who had withdrawn the funds from the bank. *Held*, that the plaintiff may recover the amount of the deposit. *Aubrey* v. *O'Byrne*, 49 Nat. Corp. Rep. 302 (Ill. App. Ct., Oct. 8, 1914).

The negotiable instrument of a third party may be the subject of a valid gift *mortis causa*. *Clement* v. *Cheesman*, 27 Ch. D. 631; *Brown* v. *Brown*, 18 Conn. 410. Delivery of the instrument would carry with it an irrevocable power of attorney to enforce the obligation in the name of the donor. *Snell-*

grove v. *Baily*, 3 Atk. 213; *Chase* v. *Redding*, 79 Mass. 418. The donor's own check, however, stands upon a different footing. An ordinary bank account is a mere parol *chose in action*. *Marine Bank* v. *Fulton Bank*, 2 Wall. (U. S.) 252. Such a claim may be irrevocably assigned by deed under seal. *Matson* v. *Abbey*, 141 N. Y. 179, 36 N. E. 11. But a parol assignment without consideration is generally held revoked by the death of the donor. *Cook* v. *Lum*, 55 N. J. L. 373, 26 Atl. 803. With a few exceptions, among them Illinois, the authorities also agree that a check is not an assignment, but a mere authority to the bank to make payment. *Hopkinson* v. *Foster*, L. R. 19 Eq. 74; *O'Connor* v. *Mechanics Bank*, 124 N. Y. 324, 26 N. E. 816. *Contra*, *Niblack* v. *Park National Bank*, 169 Ill. 517, 48 N. E. 438. And the Uniform Negotiable Instruments Law, § 189, adopted in Illinois, expressly so provides. Where, however, a check covers the whole deposit, or is accompanied by an assignment agreement, it may operate as an assignment. *In re Taylor's Estate*, 154 Pa. 183, 25 Atl. 1061. *Cf. Matter of Smither*, 30 Hun (N. Y.) 632. See 27 HARV. L. REV. 177. This is still possible, even under the Negotiable Instruments Law. See *Hove* v. *Stanhope State Bank*, 138 Ia. 39, 115 N. W. 476. The principal case, accordingly, may conceivably be justified on the ground that the check operated as an assignment of the deposit by mercantile specialty, not revoked by the death of the donor. But if this line of reasoning fails at any point, recovery is impossible, for the donee's suit against the donor's personal representative on the instrument will be met by the plea of lack of consideration. *Harris* v. *Clark*, 3 N. Y. 93.

ILLEGAL CONTRACTS — CONTRACTS AGAINST PUBLIC POLICY — CONTRACTS BY RAILROAD AS TO LOCATION OF DEPOTS. — A contract provided that the plaintiff railroad should notify the defendant of the places selected by the railroad's chief engineer as locations for its depots, and that the defendant should then purchase and lay out town sites at such places, sell the lots, and divide the proceeds with the plaintiff. *Held*, that the contract is void as against public policy. *Minnesota, D. & P. Ry. Co.* v. *Way*, 148 N. W. 858 (S. D.).

Any contract made by a railroad which may interfere with the performance of its public obligations is void as against public policy. *Pueblo & A. V. R. Co.* v. *Taylor*, 6 Colo. 1. An agreement not to locate a depot at a particular place is clearly within this rule. *Williamson* v. *Chicago, R. I. & P. R. Co.*, 53 Ia. 126, 4 N. W. 870. The validity of a contract to locate a depot at a particular place, without restrictions as to stations elsewhere, is, however, in dispute. *Atlanta & W. P. R. Co.* v. *Camp*, 130 Ga. 1, 60 S. E. 177; *Cf. Pacific R. Co.* v. *Seely*, 45 Mo. 212. See 2 ELLIOTT, RAILROADS, 2d § 928. But such agreements would also seem to be improper, in view of the danger that the efficiency of the railroad may be impaired by the unnecessary burdens consequent on the maintenance of such depots. *Halladay* v. *Patterson*, 5 Ore. 177. See *Fuller* v. *Dame*, 18 Pick. (Mass.) 472; *Bestor* v. *Walthen*, 60 Ill. 138. The contract in the principal case evidently aimed to avoid all objections by leaving the selection of the depots entirely to the railroad. It is true, of course, that this power belongs primarily to the railroad. *Florida Central & P. R. Co.* v. *State*, 31 Fla. 482, 13 So. 103. Its exercise, however, must not be influenced by any interest prejudicial to the public. *Pacific R. Co.* v. *Seely*, *supra*. In the principal case, the varying values of real estate in different localities might well appeal to the railroad in its choice of locations, and the decision properly refuses to allow it to be subjected to this temptation. See *St. Joseph & Denver City R. Co.* v. *Ryan*, 11 Kan. 602, 609.

INDICTMENT AND INFORMATION — FINDING AND FILING INDICTMENT — VALIDITY OF INDICTMENT BASED ON HEARSAY TESTIMONY — EFFECT OF